

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF LINENS 'N THINGS CANADA CORP., OF  
THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR APPROVAL  
OF THE TRUSTEE'S FEES AND DISBURSEMENTS**

I, Peter P. Farkas, CPA, CA, CIRP, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am a Managing Director of Duff & Phelps Canada Restructuring Inc. ("D&P"), Trustee of the estate of Linens 'N Things Canada Corp. (the "Company"), a bankrupt, and as such have knowledge of the matters herein, to which I depose;
2. On October 23, 2008, on application made by the Company to the *Ontario* Superior Court of Justice ("Court"), an order was made ("Order") which, among other matters, appointed RSM Richter Inc. ("Richter") as Interim Receiver and Receiver ("Receiver") pursuant to Sections 47 (1) and 47.1 (1) of the BIA and pursuant to Section 101 of the *Courts of Justice Act*;
3. On October 31, 2008, as authorized by the Order, the Receiver assigned the Company into bankruptcy, with Richter being appointed Trustee;
4. On December 9, 2011, Richter's Toronto restructuring practice was acquired by Duff & Phelps Canada Restructuring Inc. ("D&P"). Pursuant to an order of the Court made on December 12, 2011 (the "Substitution Order"), D&P was substituted in place of Richter as Trustee and as Receiver. The licensed trustees overseeing this mandate prior to December 9, 2011 remain unchanged;
5. The Company was a wholly-owned indirect subsidiary of Linens 'n Things Center, Inc. ("LNT Center"), a U.S. entity;
6. The Company's insolvency was primarily attributable to, among other matters, the following factors:
  - LNT Center and other entities in the U.S. (collectively, "Linens US") filed for protection under Chapter 11 of the *United States Bankruptcy Code* on May 2, 2008 in the United States Bankruptcy Court for the District of Delaware ("US Court"). The Company was not a party to the Chapter 11 proceedings. The Chapter 11 proceedings of Linens US were converted to Chapter 7 proceedings in February, 2010. The Chapter 7 Trustee is Mr. Charles M. Forman (the "Chapter 7 Trustee");
  - At the time of its filing, Linens US attributed its losses (fiscal 2007 of US\$242 million on revenue of US\$2.8 billion) to "deterioration in the mortgage, housing and credit markets and the resulting impact on the retail marketplace, particularly the home sector"; and

- Due to the interrelated nature of the Canadian and U.S. businesses, the Company could not carry on business independent of the U.S. This triggered the receivership and bankruptcy of the Company.
7. Shortly after the commencement of the Company's receivership proceedings, the Company's inventory was liquidated pursuant to a Court-approved agency agreement. During 2009, the liquidation of the Company's assets resulted in:
    - Generation of total proceeds in excess of \$100 million;
    - Repayment in full of secured debt of approximately \$27 million owed to GE Canada Finance Holding Company; and
    - The funding of the Trustee by the Receiver in order to allow payment in full of all preferred and unsecured claims (other than tax claims<sup>1</sup>), including employee termination and severance claims, totalling approximately \$18 million, plus interest from the date of bankruptcy.
  8. The estate inspectors ("Inspectors") were appointed by the creditors. Two of the Inspectors have resigned (in January, 2013). The third has not kept the Trustee apprised of his current contact information and is thought to have moved to South America. Consequently there are no longer any effective Inspectors;
  9. Prior to the Inspector departures, Trustee's fees totalling \$796,960 in aggregate had received Inspector approval. By Court order dated July 20, 2009, the Honourable Justice Wilton-Siegel taxed and approved the fees and disbursements of the Trustee for the period from October 31, 2008 through April 30, 2009, in the amount of \$368,543.34 including disbursements and applicable taxes;
  10. The remaining fees to completion in the amount of \$30,033.75 have not received Inspector approval inasmuch as there are no remaining Inspectors;
  11. In addition to the legal fees to complete the administration, as set out in the Trustee's Final Statement of Receipts and Disbursements attached hereto as Exhibit "B", additional legal fees were invoiced to and paid by the Receiver and have been or will be taxed by the Court as part of the receivership proceedings;
  12. Since the date of its appointment, the Trustee has been or anticipates that it will be engaged in various matters relating to the administration of the bankrupt estate, including performing various procedures in compliance with the Trustee's duties under the *Bankruptcy and Insolvency Act* ("BIA"), including:

#### **Bankruptcy Administration**

- Preparing the assignment, statement of affairs and related bankruptcy documents and filing same with the Office of the Superintendent of Bankruptcy ("OSB");

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<sup>1</sup> All tax claims will be paid by the Receiver pursuant to an audit resolution with tax authorities. There is no claim by any tax authority in the bankrupt estate.

- Preparing and mailing to all known creditors a Notice of Bankruptcy and First Meeting of Creditors ("Notice") and related documents;
- Arranging for the placement of a statutory notice in *The Globe and Mail* newspaper;
- Preparing the Trustee's Preliminary Report to Creditors on the bankruptcy administration and circulating same to the Official Receiver and the creditors present at the First Meeting of Creditors ("Meeting");
- Chairing the Meeting and preparing and circulating the minutes thereof;
- Attending at Linen US's administration office in New Jersey, to conduct a review of the Company's books and records;
- Maintaining the Trustee's banking records including monthly reconciliation of the estate account;
- Preparing the Trustee's Final Statement of Receipts and Disbursements and Dividend Sheet;
- Preparing the Trustee's administration files for review and comment by the Office of the Superintendent of Bankruptcy in advance of taxation;
- Preparing this affidavit in support of the Trustee's fees and disbursements;
- Preparing the Trustee's accounts for submission to the Court for taxation;
- Preparing and mailing a notice of the Trustee's application for discharge to all creditors with admitted claims;
- Reviewing the Company's GST filings and dealing with CRA regarding GST and other matters;
- Assisting all provincial tax authorities in completing retail sales tax audits;
- Convening eleven Inspector meetings, preparing and circulating agendas and detailed update memorandum reports in advance of the meetings, and preparing and circulating the minutes and resolutions thereof;
- Preparing, obtaining Inspector approval and distributing a dividend of 100 cents on the dollar, plus statutory interest, to all creditors with admitted claims;
- Dealing with all statutory and banking matters related to the dividend distribution;
- Reconciling all amounts owing to utilities, landlords and other service providers during the post-bankruptcy liquidation period;
- Engaging in numerous written and telephone communications in response to creditor inquiries;

- Engaging in all other bankruptcy administration matters not specifically mentioned above.

### **Claims**

- Vetting all proofs of claim filed with the Trustee and issuing disallowance notices, where applicable;
- Issuing notices to creditors of record that had not filed claims to prove their claims within 30 days.

### **“Slip and Fall” Claims**

- Prior to the bankruptcy the Company was administering 10 “slip and fall” claims. Eight of these claims were classified by the Company’s insurance adjuster as being “nominal”. The other two claims were for \$500,000 each. All claims were below the insurance deductible. The Trustee engaged in settlement negotiations resulting in settlements well below a \$500,000 reserve set by the Trustee;
- Obtaining an order of the Court pursuant to Section 34(1) of the BIA, dated June 9, 2009, barring and releasing post-filing slip and fall claims on certain terms.

### **Landlord Preferred Claims**

- Reviewing and reconciling landlord preferred claims, amounting to approximately \$2.1 million. With Inspector approval, the claims were paid in mid-March, 2009.

### **Employee Claims**

- Contacting Linens US to obtain information regarding the Company’s former employees including their outstanding wages and vacation pay;
- Configuring an employee spreadsheet (approximately 1,200 employees) containing details of outstanding wages and vacation pay in Ontario and other provinces, and other employee information (the “Schedule”);
- Calculating and mailing to each employee advice of their individual entitlement amounts as calculated under their respective provincial employment standards act;
- Dealing extensively with employees’ inquiries, including questions related to calculation of their claims;
- Responding to extensive calls and written communications from the employees regarding the status of their proofs of claim, dividends and other matters;
- Providing Human Resources and Skills Development Canada (“HRSDC”) the Schedule which had been updated to include the net dividend payments for each of the former employees with admitted claims;
- Dealing extensively with HRSDC regarding statutory deductions to be made on behalf of HRSDC from certain former employees’ dividends as repayment to HRSDC of Employment Insurance benefit overpayments;

- Reallocating and reissuing numerous dividend payments in accordance with HRSDC's instructions and dealing with all accounting issues related thereto;
- Negotiating settlements with 12 management employees who had claimed for enhanced severance and termination pay.

#### Other Matters

- Dealing extensively with the leases for 40 locations including engaging in the assignment and sale of certain leases and issuing lease disclaimers regarding various locations, as required;
  - Attending at Court regarding the trial of a disallowance received from the landlord of Roadhouse Centre located in Windsor, Ontario. The landlord claimed \$3.9 million in damages for breach of the lease. The alleged damages were based on the landlord's construction costs as opposed to rent. A motion was heard in bankruptcy court on the issue and pursuant to reasons of Registrar Nettie dated May 22, 2009, the appeal was dismissed. An appeal from the dismissal was withdrawn by the plaintiff;
  - Coordinating the administration of the receivership and bankruptcy estates; and
  - Engaging in all other matters relating to the bankrupt estate not specifically mentioned above.
11. As all creditors have been fully paid, with interest, the Trustee is requesting the Court's permission to transfer the surplus reflected on Exhibit "B" to the Receiver to be distributed to the Chapter 7 Trustee;
  12. Attached as Exhibit "A" is an analysis of the time expended or anticipated to be expended by various employees of the Trustee to completion of this estate;
  13. Attached as Exhibit "A-1" is the OSB's Letter of Comment; and
  14. I make this affidavit in support of my application for approval of the Trustee's fees and disbursements as indicated on the Trustee's Final Statement of Receipts and Disbursements attached hereto as Exhibit "B".

Dated at Toronto, Ontario this 17th day of October, 2013.

Sworn before me at the City of )  
 Toronto, Province of Ontario, this. )  
 17th day of October, 2013 )  
 \_\_\_\_\_ )  
 A Commissioner, etc. )

*Renee Fern Schwartz*

*Peter P. Farkas*  
 \_\_\_\_\_  
 Peter P. Farkas

## Exhibit "A"

This is Exhibit "A" referred to in the  
affidavit of Peter P. Forkas  
sworn before me, this 17<sup>th</sup>  
day of October 2013

Renee Schwartz  
A COMMISSIONER FOR TAKING AFFIDAVITS

Renee Fern Schwartz, a Commissioner, etc.,  
Province of Ontario, for Duff & Phelps Canada  
Restructuring Inc., Trustee in Bankruptcy  
Expires April 11, 2015.

**IN THE MATTER OF THE BANKRUPTCY OF  
LINENS 'N THINGS CANADA CORP.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**TRUSTEE'S TIME ANALYSIS**

<b>Name</b>	<b>Role</b>	<b>Hours to Aug. 31, 2013</b>	<b>Amount to Aug. 31, 2013</b>	<b>Hours - Estimated to Complete</b>	<b>Amount - Estimated to Complete</b>	<b>Total Hours</b>	<b>Rate (\$)</b>	<b>Total Amount</b>
<b><u>Trustees</u></b>								
Peter Farkas, CPA, CIRP	Overall responsibility including all inspector - related matters.	110.50	65,957.50	6.00	3,900.00	116.50	595 - 650	\$ 69,857.50
Robert Harlang	Specific landlord matter	0.50	297.50	-	-	0.50	595	297.50
Gus Tertigas, CPA, CIRP	Engaging in all aspects of mandate including preliminary report, estate legal matters, reports and attendances at court regarding estate matters, reports to estate inspectors and creditors, employee and creditor claims and dividend payments.	381.50	191,475.00	-	-	381.50	500 - 525	191,475.00
Wayne Palmer, CPA, CIRP	Dealing with landlord claims review and disallowances, vendor agreements, utility issues and claims, books and records review, vendor claims review, disallowances, appeals and settlements, trustee's estate liabilities and obligations, creditor inquiries, claims issues.	585.25	234,100.00	-	-	585.25	400	234,100.00
Mitch Vininsky, MBA, CIRP	Supervising, dealing with dividend payments	1.60	760.00	-	-	1.60	475	760.00
<b><u>Estate Administrators</u></b>								
Javed Rasool	Tracking and classifying receipts and disbursements, summarizing and maintaining schedules and subschedules, dealing with employee and creditor inquiries.	25.50	9,787.50	-	-	25.50	375 - 450	9,787.50
John Tertigas	Dealing with employees regarding numerous employee issues including T4A's and Employment Insurance overpayments, dealing with Service Canada, responding to creditor inquiries.	279.50	97,825.00	-	-	279.50	350	97,825.00



## TRUSTEE'S TIME ANALYSIS

Renee Schwartz	Bankruptcy administration including preparing assignment filing documents, coordinating creditor meeting and drafting minutes, dividend distributions, statutory notices, submissions to Superintendent and court, coordinating Inspector meetings and drafting and circulating the minutes thereof, communicating with Inspectors, communications with Service Canada, creditors.	263.75	73,195.00	50.00	14,500.00	313.75	275 - 290	87,695.00
Brian Creech	Employee matters	14.50	5,437.50	-	-	14.50	375	5,437.50
Faisal Hadibhai	Employee matters	17.80	5,785.00	-	-	17.80	325	5,785.00
<b>General Administration</b>								
Raj Kashyap/Sheila Penton	Correspondence and creditor inquiries, maintaining claims and claims register, dealing with unclaimed dividend issues, employee inquiries	97.75	9,775.00	1.00	100.00	98.75	100	9,875.00
E. Baltazar, G. Pitton, M. Mendoza, S. Bhatia, Andrea Tolfo, various others	Dividend distributions, statutory notices - photocopies and mailing	394.55	32,573.75	10.00	650.00	404.55	50 - 100	33,223.75
<b>Accounting</b>								
Simon Thean	Maintaining bank accounts, preparing monthly account reconciliations, issuing payments, dealing with employee dividend issues and T4A's, performing all other accounts payable functions not mentioned herein.	325.00	73,125.00	30.00	6,750.00	355.00	225	79,875.00
Kit Lam	Preparing 2009 T4A's and schedules	10.00	1,000.00	-	-	10.00	100	1,000.00
<b>Secretarial</b>								
Chris Butler/Veronica Budac/Raj Kashyap		32.05	3,205.00	1.00	100.00	33.05	100	3,305.00
		<u>2,539.75</u>	<u>804,298.75</u>	<u>98.00</u>	<u>26,000.00</u>	<u>2,637.75</u>		<u>\$ 830,298.75</u>
Less secretarial support (nonchargeable)								-3,305.00
Trustee's fee								<u>\$ 826,993.75</u>



## Exhibit "A-1"

This is Exhibit "A-1" referred to in the  
 affidavit of Peter P. Farbas  
 sworn before me, this 17<sup>th</sup>  
 day of October 2013

Renee Schwartz  
 A COMMISSIONER FOR TAKING AFFIDAVITS

Renee Fern Schwartz, a Commissioner, etc.,  
 Province of Ontario, for Duff & Phelps  
 Restructuring Inc., Trustee in Bankruptcy  
 Expires April 11, 2015



Industry Canada

Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant  
des faillites Canada

October 24, 2013

PETER PAUL FARKAS  
Bay Adelaide Centre  
333 Bay Street, 14th Floor  
Toronto, Ontario  
Canada M5H2R2

In the Matter of the Bankruptcy of:

**LINENS 'N THINGS CANADA CORP.**

Debtor

**RSM RICHTER INC.**

Trustee

ORDINARY ADMINISTRATION

Re: Superintendent's Comments - Section 152(4)  
Statements of Receipts and Disbursements  
Dated: October 17, 2013 - Final  
Total Receipts: \$34,972,906.17  
Total Disbursements: \$15,976,638.60  
Estate Number: 31-1121528

The Statement of Receipts and Disbursements was subjected to the Office of the Superintendent of Bankruptcy (the "OSB") examination process pursuant to paragraph 5(3) (g) of the *Bankruptcy and Insolvency Act* (the "Act"). We request that you proceed to taxation pursuant to section 60 of the Bankruptcy and Insolvency General Rules.

This letter does not preclude the Superintendent of Bankruptcy from exercising any of his powers under the Act if the OSB becomes aware of facts that raise compliance issues relating to your administration and the requirements of the Act, the General Rules and the Directives of the Superintendent.

The Superintendent of Bankruptcy

25 St. Clair Avenue East, 6th floor, Toronto, Ontario, Canada, M4T1M2, (877)376-9902

**Canada**

## Exhibit "B"

This is Exhibit "B" referred to in the  
affidavit of Peter P. Forhas  
sworn before me, this 17<sup>th</sup>  
day of October 2013

Renee Schwartz  
A COMMISSIONER FOR TAKING AFFIDAVITS

Renee Fern Schwartz, a Commissioner, etc.,  
Province of Ontario, for Duff & Phelps Canada  
Restructuring Inc., Trustee in Bankruptcy  
Expires April 11, 2015.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF LINENS 'N THINGS CANADA CORP., OF THE  
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**TRUSTEE'S FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS**

**RECEIPTS**

Transfer from Receiver's account (Note 2)	\$ 21,893,402.78
Company's bank account balances	11,915,539.34
Sale of leases	548,366.48
GST refund	402,304.49
Interest	131,547.67
Utility and other refunds	70,135.78
US tax refund	11,611.63
Total receipts	<u>34,972,908.17</u>

**DISBURSEMENTS**

**Re: First Meeting of Creditors**

Postage and photocopies (1841 creditors)	10,735.86	
<i>The Globe and Mail</i>	\$ 1,222.83	
GST	<u>597.93</u>	\$ 12,556.62

**General Disbursements**

Wages	6,070,078.79	
Occupation rent	4,291,392.69	
Utilities - various	445,875.07	
GST	265,453.00	
Purchases	123,146.70	
Shredding/waste disposal	117,810.48	
Settlements	96,344.15	
Telephone / teleconference	82,762.86	
WSIB/WSB	57,184.67	
Employee benefits	53,096.02	
Computer services	31,289.97	
Business tax	26,957.12	
Repairs and maintenance	11,991.52	
Agents re: Out-of-province registrations/ trademarks/ other matters	14,833.97	
Travel and courier	8,828.80	
Photocopies	5,192.64	
Security	5,096.87	
Postage	4,002.66	
Bank charges	2,582.99	
Storage	2,485.60	
HST	206.82	
PST	149.91	
Reimbursement to Receiver (Note 5)	<u>3,359,778.84</u>	15,076,542.14

**Notice of Trustee's Application for Discharge**

Postage and photocopies (1432 creditors)	\$	1,260.16	
HST		<u>163.82</u>	1,423.98

**Fees**

Trustee	\$	826,993.75	
GST on Trustee's fees		38,683.36	
HST on Trustee's fees		7,998.74	
Legal fees to completion		10,000.00	
HST on legal fees		1,300.00	
Inspectors		840.00	
Superintendent of Bankruptcy		150.00	
Registrar		<u>150.00</u>	886,115.85
Total disbursements			<u>15,976,638.60</u>
<b>Amount available for distribution</b>			<b>\$ <u>18,996,269.57</u></b>

**Distribution (Note 6):**

Levy payable under Section 147	\$	105,126.09	
Preferred creditors (admitted claims: \$2,231,591.98)		2,219,242.07	
Unsecured creditors (admitted claims: \$16,764,677.59)		<u>16,671,901.41</u>	<b>\$ <u>18,996,269.57</u></b>

**Notes:**

- On October 18, 2008, Linens N' Things Canada Corp. (the "Company") filed a Notice of Intention to Make a Proposal under Section 50.4 (1) of the *Bankruptcy and Insolvency Act* (BIA). RSM Richter Inc. ("Richter") was appointed proposal trustee.
- On October 23, 2008, on application made by the Company to the Ontario Superior Court of Justice ("Court"), an order was made ("Order") which, among other matters, appointed Richter as Interim Receiver and Receiver ("Receiver") pursuant to Sections 47 (1) and 47.1 (1) of the BIA and pursuant to Section 101 of the *Courts of Justice Act*.
- On October 31, 2008, as authorized by the Order, the Receiver assigned the Company into bankruptcy, with Richter being appointed Trustee.
- On December 9, 2011, Richter's Toronto restructuring practice was acquired by Duff & Phelps Canada Restructuring Inc. ("D&P"). Pursuant to an order of the Ontario Superior Court of Justice made on December 12, 2011 (the "Substitution Order"), D&P was substituted in place of Richter as Trustee and as Receiver. The licensed trustees overseeing this mandate prior to December 9, 2011 remain unchanged.
- Pursuant to Section 144 of the BIA, the bankrupt or the legal representative of the bankrupt is entitled to any surplus remaining after payment in full of the Company's creditors' admitted claims, with interest as provided by the Act at the statutory rate of 5% per annum, and after the costs, charges and expenses of the bankruptcy proceedings. As all creditors have been fully paid, with interest, the Trustee will request the Court's permission to transfer the surplus to the Receiver to be distributed to the Chapter 7 Trustee of the Company's U.S. parent company.

6. The preferred and unsecured admitted claim amounts represent 100 cents on the dollar plus interest.
7. As noted below, two of the estate Inspectors resigned in January, 2013 and the third has not kept the Trustee apprised of his current contact information.

DATED this 17th day of October, 2013

DUFF & PHELPS CANADA  
RESTRUCTURING INC.  
(formerly accepted under RSM Richter Inc.)  
TRUSTEE

Per: \_\_\_\_\_

Approved by:

*(Trustee has been unable to locate  
Mr. Barbosa since October, 2009)*

Flavio Barbosa, Inspector

*(Resigned January 22, 2013)*

John O'Brien, Inspector

*(Resigned January 29, 2013)*

Rick Wotherspoon, Inspector

TRUSTEE'S COSTS AND REMUNERATION  
APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

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**File No.: 31-1121528**

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**ONTARIO  
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IN BANKRUPTCY AND INSOLVENCY**

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**IN THE MATTER OF THE BANKRUPTCY  
OF LINENS 'N THINGS CANADA CORP.,  
OF THE CITY OF TORONTO, IN THE  
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**TRUSTEE'S FINAL STATEMENT OF  
RECEIPTS AND DISBURSEMENTS**

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**DUFF & PHELPS CANADA RESTRUCTURING INC.  
(formerly accepted under RSM Richter Inc.)  
TRUSTEE  
333 Bay St., 14th Floor  
Toronto, ON M5H 2R2**

**Tel: 416-932-6223  
Fax: 647-497-9481**



File No.: 31-1121528

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE BANKRUPTCY  
OF LINENS 'N THINGS CANADA CORP.,  
OF THE CITY OF TORONTO, IN THE  
PROVINCE OF ONTARIO

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AFFIDAVIT IN SUPPORT OF AN  
APPLICATION FOR APPROVAL OF THE  
TRUSTEE'S FEES AND DISBURSEMENTS

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DUFF & PHELPS CANADA RESTRUCTURING INC.  
*(formerly accepted under RSM Richter Inc.)*  
TRUSTEE  
333 Bay St., 14th Floor  
Toronto, ON M5H 2R2

Tel: 416-932-6223  
Fax: 647-497-9481